BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

IN RE:	**Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Incorporated for Review and Approval of a Proposed Business HT Combination between SCANA Corporation and Dominion Energy, Incorporated, as May Be Required, and for a Prudency Determination Regarding the Abandonment of the V.C. Summer Units 2 & 3 Project and Associated Customer Benefits and Cost Recovery Plans**	**Docket No. 2017-370-E**

PRE-HEARING BRIEF OF
THE SOUTH CAROLINA PUBLIC SERVICE AUTHORITY

Pursuant to the South Carolina Public Service Commission's Orders 2018-303 and 2018-114-H, the South Carolina Public Service Authority ("Santee Cooper") respectfully offers this pre-hearing brief to request that the Commission review this Merger application and the issues surrounding the abandonment of the V.C. Summer Units 2 and 3 Project (the "Project") from the perspective of all South Carolina electric customers who are affected by the abandonment of the Project. This is not a traditional merger application under Section 58-27-1300 of the South Carolina Code. South Carolina Electric & Gas Company ("SCE&G") and Dominion Energy ("Dominion") (together, the "Joint Applicants") not only seek approval of their proposed Merger, they have proposed a "Customer Benefit Plan" or an "Alternative Plan" that, among other things, seeks a final resolution of all financial issues associated with SCE&G's abandonment of the Project, which affects customers from all corners of the State of South Carolina. For the reasons discussed below, Santee Cooper proposes that any benefit plan approved by the Commission include a Public Interest Fund that would be used to the benefit of Santee Cooper's wholesale and retail customers.

Santee Cooper intervened in this proceeding as a result of its ownership stake in the Project, and in order to protect the interests of its wholesale and retail customers as well as the State of South Carolina itself. Santee Cooper is "completely owned by and to be operated for the benefit of the people of [South Carolina]." S.C. Code Ann. § 58-31-110. SCE&G abandoned the Project so that its shareholders and its customers will experience significant financial benefits stemming from tax savings. SCE&G's abandonment, however, could saddle Santee Cooper's customers throughout the State with responsibility for the continued maintenance and preservation of any financial value of the Project. Indeed, the Governor of the State of South Carolina called on Santee Cooper to immediately intervene in this proceeding to address concerns with properly maintaining and preserving "hundreds of millions of dollars in equipment located at the site" and to seek "to mitigate irreparable damage to the project and the valuable equipment on the site." (*See* Letter from Governor Henry D. McMaster to Santee Cooper Director William A. Finn (Feb. 7, 2018), Dkt. 2017-370-E, Id. 274497 (filed Feb. 9, 2018).)

In their original application, the Joint Applicants set forth a proposal for the abandonment of the Project that they argued must be approved without material modification for the Merger to close. That plan, dubbed the Customer Benefit Plan, seeks to guarantee cost recovery for SCE&G for certain of the costs it has incurred in the Project and also identifies various credits and cost write-offs that would benefit only a fraction of the state's electric customers that are impacted by the abandonment of the Project. In Supplemental Rebuttal Testimony, the Joint Applicants have put forth an "Alternative Plan," that "focuses more directly on long-term permanent bill relief, as opposed to up-front customer refunds." Conspicuously absent from either proposal are any benefits to Santee Cooper wholesale and retail customers who have been negatively impacted by the abandonment in the same manner as SCE&G's customers and who, in addition, now could be

faced with the ongoing responsibility for maintaining the Project assets in order to attempt to achieve some salvage value.

The Joint Applicants claim that the Merger, together with their proposed benefits to customers, "is in the public interest and will provide benefits to SCE&G customers *and to South Carolina.*" (Petition at 29 (emphasis added).) Santee Cooper agrees with Joint Applicants that the Merger as proposed must provide benefits to South Carolina in order to obtain Commission approval, but disagrees that the proposal before the Commission as presented satisfies the public interest. The Commission should – indeed, must – scrutinize the Merger application, the Customer Benefit Plan, the Alternative Plan and issues related to the abandonment of the Project from a state-wide perspective given the ramifications that this abandonment raises to all of South Carolina. Regardless of the benefit plan that the Commission considers as part of its review of the Merger proposal, the public interest can only be met in this circumstance if all of South Carolina benefits. Santee Cooper thus proposes that regardless of the benefit plan considered by the Commission, the public interest can only be achieved through the creation of a Public Interest Fund that would be used to the benefit of Santee Cooper's wholesale and retail customers at a value that is comparable to the benefits that are being created for SCE&G customers. Importantly, any benefits that flow to Santee Cooper customers and the State of South Carolina should not be at the expense of or funded by SCE&G ratepayers.

BACKGROUND

Pursuant to Section 58-31-200 of the South Carolina Code, South Carolina vested Santee Cooper with the authority to contract with a joint owner for the planning, financing, acquisition, construction, ownership, operation, and maintenance of a nuclear generating station in Fairfield County. Consistent with this legislative authorization and the public policy of the State of South

Carolina, Santee Cooper entered into such an agreement with SCE&G to develop the Project for the benefit of the people of South Carolina.

Under the terms of a Design and Construction Agreement dated October 20, 2011 ("DCA"), Santee Cooper is a 45% co-owner of the Project with the remaining 55% owned by SCE&G. *See* DCA § 3.1.1. Further, "SCE&G [had] the lead role in planning and development of the Project and [had] the primary role in dealing with Governmental Authorities and third-party vendors…." *Id.* § 2.1. In particular, SCE&G was specifically authorized to:

- "Manage all aspects of the day-to-day design and construction of the Project, including … scheduling, [and] financial…aspects of the Project." *Id*. at § 2.1b.
- "Annually develop the Project Budget and a projection to complete the Project …." *Id*. at § 2.1d.
- "Monitor the Project Budget and annual expenditures…." *Id*. at § 2.1e.

In addition, "SCE&G … act[ed] as agent on behalf of the Project with respect to all aspects of the acquisition, design, engineering, licensing and construction of the Project, including the negotiation, execution and performance of the obligations and enforcement of the rights of the Parties under the EPC Agreement…." *Id* at § 2.3.

On March 29, 2017, the General Contractor for the Project, Westinghouse Electric Company ("WEC"), declared bankruptcy. In bankruptcy, WEC would be positioned to reject the existing fixed-price, turn-key contract with SCE&G and Santee Cooper to construct the Project and thus force them to absorb all cost increases. On July 31, 2017, Santee Cooper's Board of Directors resolved to wind-down and suspend Project construction, remove all non-essential personnel from the site, reduce Project expenditures and personnel costs, develop plans to preserve and protect the Project site, and to identify third parties to purchase an undivided ownership interest in one or both of the units, and/or the related plant components and equipment. SCE&G, however,

made the decision to abandon the Project effective immediately. (*See* Letter from Jeffrey B. Archie to NRC, V.C. Summer, Units 2 and 3 – Request for Withdrawal of VCSNS Unit 2&3 COLs, dated Dec. 27, 2017 (ML 17361A088), filed as Attachment 3 to ORS Letter, Dkt. 2017-244-E (Jan. 12, 2018).) This decision, according to SCE&G, was made in order to take advantage of a tax benefit that would offset the costs of the project for SCE&G's customers. (*See* SCE&G's Mot. Expedite Hearing at 2, Dkt. 2017-370-E (Aug. 1. 2017).)

While Santee Cooper takes no position on the actions taken by SCE&G to secure a tax benefit for its own customers, the Commission must recognize that, by doing so, SCE&G has shifted the post-abandonment costs of the Project to Santee Cooper's customers because Santee Cooper could now be the sole entity responsible for maintaining Project assets in order to maximize their value for the State of South Carolina.

ANALYSIS

I. The Commission may only approve the Merger if it determines that it is in the public interest.

The Commission is required independently to determine whether the Merger is in the public interest. *See In Re Application of Tega Cay Water Service, Inc.*, 2006 S.C. PUC LEXIS 198 (finding that the Commission "must consider whether the public interest will be served by" a proposal); *see also In Re Petition of the Office of Regulatory Staff*, 320 P.U.R.4th 268 (recognizing that the Commission itself was charged with determining whether a settlement agreement regarding the Distributed Energy Resource Program Act was in the public interest); *In Re Application of South Carolina Elec. & Gas Co.*, 2007 S.C. PUC LEXIS 113 at *6 (determining that an SCE&G rate case "presents issues of significant implication for the utility and the public interest," and consequently the Commission convening an evidentiary hearing to consider whether settlement of the proceeding "is just, fair, reasonable, [and] in the public interest"). The

Commission's duty is separate and apart from ORS's function as the creation of ORS "did not change the duties of the Commission" to determine whether a proposal is in the public interest. In fact, the General Assembly – the entity vested with granting the Commission with its regulatory authority – has recognized the Commission's responsibility is "to regulate common carriers and utilities serving the public as, and to the extent, required by the public interest." 1980 Act No. 440, Section 1.

II. Santee Cooper's interests are aligned with the public interest of the State of South Carolina.

The General Assembly defines public interest in the context of proceedings before the Public Service Commission as "the concerns of the *using and consuming public* with respect to public utility services, regardless of the class of customer and preservation of continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services." S.C. Code Ann. § 58-4-10(C) (as amended in 2018, Act No. 258) (emphasis added). The public interest as considered by the Public Service Commission extends to the "using and consuming public" – all of South Carolina. Under the circumstances presented here, the public interest should not be limited to the service territory of a particular utility.

Created by the General Assembly in 1934, Santee Cooper is owned by and for the benefit of the people of the State of South Carolina. From its inception, Santee Cooper's mandate was to develop the resources of the State "for the benefit of all the people of the State, for the improvement of their health and welfare and material prosperity," and by legislative decree its purposes "are public purposes." S.C. Code Ann. § 58-31-80. Santee Cooper is a tax-exempt, non-profit corporation. *Id.* Santee Cooper does not and cannot take actions that are designed to benefit shareholders – it has no shareholders. Rather, Santee Cooper pays its excess revenues

"semiannually to the State Treasurer for the general funds of the State" as a means "to reduce the tax burdens on the people of this State." S.C. Code Ann. § 58-31-110.

The Project was initiated upon a determination by Santee Cooper that it benefited its customers and South Carolina. Similarly, the ORS and the SC PSC determined that SCE&G moving forward with the Project was in the public interest of South Carolina. Santee Cooper's participation in this proceeding is to ensure that the Commission's decision with respect to the abandonment of the Project also considers the interests of all South Carolina customers affected by the abandonment.

III. The public interest includes all customers affected by the decision to abandon the project.

This proceeding before the Commission is not the typical proceeding under Section 58-27-1300 seeking the approval for the transfer of utility property from one entity to another. The Joint Applicants have combined consideration of the merger transaction with a final determination regarding SCE&G's abandonment of the Project. Specifically, as a condition precedent to the consummation of the Merger, SCE&G and Dominion have requested a prudency determination regarding the abandonment of the Project as well as approval of a Customer Benefit Plan or the Alternative Plan that incorporates proposed credits, refunds, and cost recovery terms related to the Project.

Joint Applicants acknowledge that an important factor for the Commission to consider as part of its inquiry here is a path "to ease the burden on customers of [Project] costs, to the highest reasonable extent." (Petition at 3.) In factoring the burden that the abandonment of the facility has on customers, the Joint Applicants seek a finding that "the Merger is in the public interest or that there is an absence of harm to South Carolina ratepayers as a result of the Merger" and propose a package of benefits funded in part by savings resulting from the abandonment of the Project.

Petition at 23-29. Indeed, they argue that the Merger, as proposed, is in the public interest: "[t]he Merger is in the public interest and will provide benefits to SCE&G customers *and to South Carolina.*" (Petition at 29 (emphasis added); *see also* Petition at 40 ("SCE&G joins with Dominion Energy in affirming that the Merger is in the best interest of SCE&G's customers and the State of South Carolina.").) Santee Cooper agrees that the Joint Applicants' proposals should be shown to be in the public interest and provide benefit to all of South Carolina, and to do so, any proposal must ease the burden for *all* South Carolina customers affected by the abandonment.

For the Merger to benefit the State of South Carolina as a whole and thus the public interest, the pool of those benefited must be expanded beyond the narrow reach of the Joint Applicants' proposals, which currently includes only SCE&G shareholders and customers. By structuring a Merger proposal in this manner, the Joint Applicants ignored the fact that the using and consuming public throughout South Carolina is negatively affected by SCE&G's decision to abandon the facility. For the Merger to benefit all of South Carolina as Joint Applicants assert, the public interest demands that any benefit plan not be limited solely to SCE&G's shareholders and customers.

Santee Cooper's customers alone could be solely responsible for the ongoing costs associated with the Project and the expenses to obtain maximum value from any sale of the personal property associated with the Project. Santee Cooper customers already have contributed at least $540 million toward the cost of the Project. *See* Santee Cooper, The Nuclear Story and Facts, https://www.santeecooper.com/About/Nuclear-Update/Index.aspx. Santee Cooper has paid approximately $39 million for wind-down costs resulting from SCE&G's abandonment of the project and has estimated annual going forward costs for the Project at a minimum of $16 million. *See* Santee Cooper Presentation to the S.C. Public Service Authority Evaluation and

Recommendation Committee (Aug. 22, 2018), https://www.scstatehouse.gov/CommitteeInfo/PublicServiceAuthorityEvaluationandRecommendation/Main.php. Moving forward all costs, expected or unexpected, arising from the abandonment could fall on customers that are not included in either the Customer Benefit Plan or the Alternative Plan that Joint Applicants have proposed as a condition precedent to Merger approval.

The Joint Applicants have linked consideration of the merits of the Merger with abandonment of the Project and the cost and benefits associated with that abandonment. They offer Merger proposals that they claim provide benefits and are in the best interests of the State of South Carolina. However, conspicuously absent from the Customer Benefit Plan, the Alternative Plan, and the other parts of the Merger proposal is any benefit that would exist for the State of South Carolina. Importantly, Santee Cooper now stands alone in its efforts to preserve value from property associated with the Project – property that is partially owned by the people of South Carolina. Proper review of the Merger can only be accomplished if the Commission considers all customers affected by abandonment when it assesses the merits of the Joint Applicants' proposals. Only then can the public interest be addressed adequately.

IV. The Commission should not approve the abandonment proposal and Merger as being in the public interest unless SCANA and Dominion commit to creating a Public Interest Fund that recognizes the impact of the abandonment on the State of South Carolina.

To correct the defects in the Joint Applicants' proposals and ensure that the Merger satisfies the public interests, the Commission should establish a Public Interest Fund that would serve to mitigate the financial impact of the Project and SCANA's abandonment on all of Santee Cooper's wholesale and retail customers. To be clear, Santee Cooper is not advocating that this fund be established at the expense of SCE&G customers. No portion of this fund should be recoverable in rates from SCE&G customers.

Under the original proposed Customer Benefit Plan, SCE&G's customers are set to receive $1.3 billion in connection with the proposed combination. (Petition at 24.) Based on SCANA's testimony, this represents 65% of the costs paid to date by SCE&G's customers for the Project. (*See* Iris Griffin Testimony, 82:8-11 (*S.C. Elec. & Gas Co. v. Randall*, CA No. 3:18-cv-01795, July 30, 2018), submitted by ORS to PSC on Oct. 24, 2018, Dkt. 2017-370-E and Consolidated Proceedings; *see also S.C. Elec. & Gas Co. v. Randall*, CA No. 3:18-cv-01795-JMC, 2018 WL 3725742 at *3, ¶ 12 (D.S.C. Aug. 6, 2018) ("Ratepayers have paid to SCE&G roughly $2 billion in revised rates for financing the Project." (citing SCE&G testimony)).) In accordance with the public interest, Santee Cooper proposes that the same relief should be afforded to its wholesale and retail customers – 65% of the $540 million paid through 2017 by Santee Cooper customers, or $351 million. These funds would be used by Santee Cooper for the benefit of its customers consistent with its statutory obligations under Section 58-31-55 of the South Carolina Code.

Santee Cooper recognizes that the Joint Applicants have proposed in Supplemental Rebuttal testimony an alternative plan that eliminates an immediate cash payment in favor of increased refunds that would spread the value of the benefits for SCE&G customers over a longer period of time. The creation of this alternative does not significantly change the value of the benefits that flow to SCE&G customers and it also does not address the impact that the abandonment of the Project has on Santee Cooper customers. Regardless of the plan that the Commission approves, the public interest in this case can only be met if the interests of all those affected by the abandonment are included. The Public Interest Fund proposed here accomplishes that requirement.

This fund represents only a fraction of the costs that have been and would continue to be borne by the wholesale and retail customers of Santee Cooper. As stated, these customers have

already paid at least $540 million toward the project. Santee Cooper has spent $4.7 billion toward the Project, costs that its customers will continue to pay going forward. As a result of SCE&G abandoning the Project, Santee Cooper customers could shoulder 100% of the cost responsibility associated with implementing an adequate preventative maintenance program designed to maximize value for all of South Carolina. Indeed, SCE&G testified that since its decision to abandon the Project in 2017, it has taken no action inconsistent with the abandonment and that moving forward: "[d]ue to the abandonment decision, SCE&G has no further plans for the materials on site." (K. Young Direct Testimony at pp. 43, 45, Dkt. No. 2017-370-E.)

The people of South Carolina who now could be responsible for costs associated with SCE&G's abandonment of the Project must not be ignored. The abandonment costs and the costs that Santee Cooper customers paid and could continue to pay for this Project cannot be ignored but rather must be included as a component of the Commission's cost/benefit analysis in assessing the merits of Joint Applicants' proposal.

CONCLUSION

The public interest can only be satisfied if the interests of all customers affected by the abandonment, including Santee Cooper customers, are considered as part of this proceeding.[1] Approval of this Public Interest Fund would address those interests.

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[1] By sharing this proposal, Santee Cooper does not intend to and does not waive its rights under the tolling agreement or under any and all agreements between Santee Cooper and SCE&G or SCANA, including the Design and Construction Agreement. Further, Santee Cooper cannot, does not intend to, and does not waive any of its rights or obligations under the law of South Carolina.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ B. Rush Smith III

William C. Hubbard
SC Bar No. 0002739
E-Mail: william.hubbard@nelsonmullins.com

B. Rush Smith III
SC Bar No. 012941
E-Mail: rush.smith@nelsonmullins.com

A. Mattison Bogan
SC Bar No. 72629
E-Mail: matt.bogan@nelsonmullins.com

Carmen Harper Thomas
SC Bar No. 76012
E-Mail: carmen.thomas@nelsonmullins.com

Weston Adams, III
SC Bar No. 64291
E-Mail: weston.adams@nelsonmullins.com

1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for South Carolina Public Service Authority

Columbia, South Carolina
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